

REMARKS

The presently added recitation amending Claim 1 finds support in page 5, lines 19-23 and page 7, lines 20-24.

The objection raised relative to Claim 1 repeats that which was raised in the Action of January 4, 2007. The objection refers to a "vertical line" that appears above the formula in Claim 1. In their previous communication (Amendment mailed March 30, 2007) Applicants explained that the "vertical line" is in fact the Roman numeral "I" reference to which is made in the text of Claim 1.

The continued objection is respectfully asserted to be erroneous and its withdrawal is requested.

Applicants note that paragraphs 1-15 (pages 2-11) of the Action repeat the text of the corresponding paragraphs of the Office Action of January 4, 2007. No purpose is immediately recognized to have been served by this repetition.

The presently claimed invention is directed to a process whereby an article made of a polymeric material is treated by contacting at least part of its surface with a "treatment" composition. The "treatment" composition includes at least one functional additive selected from a defined group, water, a carrier and a diol. After maintaining contact between surface and treatment composition the article is removed. The thus treated article features the specific function imparted to it by the selected additive.

Claim 1 and 10 continue to be rejected on the ground of non-statutory obviousness-type double patenting, the Examiner contending that the presently claimed "mold release agent" that is included among the claimed functional additives is not patentably distinct from the "surfactant" claimed in U.S. Patent 6,949,127.

Applicants have in their previous amendment pointed to that "mold release agent" is a term-of-art referring to a lubricant that is applied to a mold surface to facilitate release of the molded part and that "surfactant" refers to a compound that alters the surface tension of a liquid in which it is dissolved and thereby improves wetting.

In maintaining this rejection Examiner contends that Applicant's remarks,
"do not show or dispute that the materials **do not** overlap in function"
(emphasis added),

and that

"a surfactant is still **interpreted** to provide the claimed function of releasing
from a mold" (emphasis added).

In respectful traverse Applicants call attention first to that it is Examiner's duty
to prove that which he perceives to be an overlap and that it is not up to Applicants'
to prove the negative. Examiner is respectfully reminded that in denying
patentability it is Examiner's burden to produce evidence to support his position; it is
not for Applicants to prove the negative. Only if that burden is met, does the burden
of going forward shift to the applicant. In re King 231 USPQ at 138-39; In re Wilder
166 USPQ at 548.

Second, Examiner's assertion that a surfactant is "interpreted to provide" the
function of a mold release agent is unsupported and thus lacks merit.

The withdrawal of the rejection in view of the above is solicited.

Claims 1, 20 and 27 continue to be rejected on the ground of non-statutory
obviousness-type double patenting, the Examiner contending that the presently
claimed "IR absorber" or "optical brightener" are claimed as "dye" in co-pending
patent application 10/733,111 (now U.S. Patent 7,175,675).

In addressing the rejection Applicants have pointed to that "dye" is a term
describing a substance used to color materials and that this function of a "dye"
describes neither the "IR absorber" nor the "optical brightener" presently claimed.

An IR absorber is a substance that absorbs electromagnetic radiation in the
range of 0.78 to 300 microns (that is longer than visible light) and an "optical
brightener" is a substance that absorbs the invisible ultraviolet component of sunlight
and re-emits it as visible light at the blue end of the spectrum.

In maintaining this rejection Examiner contends that Applicant's remarks
"do not show or dispute that the materials **do not** overlap in function"
(emphasis added),

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and that

"a dye is still **interpreted** to provide absorption or brightening" (emphasis added),

and that

"If the additives provide the cited function, then they inherently meet the definition of that additive as claimed," (emphasis added)

In respectful traverse Applicants once more call attention first to that it is Examiner's duty to prove that which he perceives to be an overlap and that it is not up to Applicants' to prove the negative. Examiner is respectfully reminded that in denying patentability it is Examiner's burden to produce evidence to support his position; it is not for Applicants to prove the negative. Only if that burden is met, does the burden of going forward shift to the applicant. In re King 231 USPQ at 138-39; In re Wilder 166 USPQ at 548.

Second, Examiner's assertion that a "dye" is "interpreted to provide the absorption or brightening is unsupported and thus lacks merit.

Third, since the record contains nothing to support Examiner's assertion of inherency, Examiner's position is clearly erroneous.

The withdrawal of the rejection in view of the above is solicited.

Claims 1-19 and 27 stand rejected under 35 U.S.C. 102(e) as anticipated by WO03/083207 (herein Pyles).

Applicants have argued that Pyles that disclosed a process for tinting an article molded of polymeric resin disclosed none of the presently claimed additives and cannot therefore reasonably be taken as anticipatory.

In maintaining the rejection Examiner contends that

- (i) "the dye of Pyles would provide at least one of the claimed functions, particularly IR absorption." and that,
- (ii) "Applicants remarks do not appear to show otherwise." and that,
- (iii) "If the additives provide the cited function, then they inherently meet the definition of that additive as claimed."

In respect to (i) above Applicants call attention to that the standard for anticipation under section 102 is one of strict identity. To anticipate a claim for a patent, a single prior art document must contain all the essential elements of the claimed invention. In *Re Donohue* 226 USPQ 619. Nothing in the record support Examiner's assertion that Pyles' dye provides "at least one of the claimed functions".

Referring to (ii) above, Examiner is once more reminded that in denying patentability it is Examiner's burden to produce evidence to support his position; it is not for Applicants to prove the negative. Only if that burden is met, does the burden of going forward shift to the Applicants. In *re King* 231 USPO at 138-39; In *re Wilder* 166 USPO at 548.

The sentence quoted in (iii) above is correct. That is "if" the additives provide the cited function then, and only then an argument sounding in inherency may be raised. Since however the record contains nothing to show that Pyles dyes provide any of the claimed function the contention of Inherency is clearly erroneous.

The withdrawal of the rejection over Pyles in view of the above is solicited.

The several claims stand rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent 5,015,523 (herein Kawashima).

The method of Claim 1, the only independent claim, has been discussed above. The remaining claims thus rejected all depend, directly or indirectly from Claim 1.

Kawashima disclosed a coated lens. In accordance with the referenced process an adhesion promoting primer layer is applied to the lens and an abrasion resistant layer of colloidal silica is then applied to the primer. Kawashima's primer coating solution contains 60 to 90 percent of at least one component selected from a designated group that includes cellosolve and ethylene glycol among its members.

As presently amended the inventive method requires that the claimed carrier be present in the treatment composition in an amount of 10 to 30 percent and that the claimed diol be present in the treatment composition in an amount of 5 to 20 percent.

In view of the amendment, the Kawashima document is believed avoided as a reference negating patentability in the present context.

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Withdrawal to the rejection in view of the amendment is requested.

Examiner's argument made in paragraph 17, subparagraph (e) is believed addressed by the present amendment that introduced limitation to all pending claims.


It is axiomatic that a reference that does not anticipate the Independent claim, cannot validly anticipate the dependent, narrower claims that recite all the limitation of the independent claim.

Retraction of the rejections of the dependent claims is respectfully solicited.

Believing the above is a complete response to the Office Action and that the application is in condition for allowance Applicants request the earliest indication to this effect.

Respectfully submitted,

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